In the High Court of Judicature at Madras

Dated : 1.10.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.278 of 2004

The Commissioner of Income Tax-I
Chennai .. Appellant

Vs

M/s.Tamil Nadu Sugar Corporation Ltd.,
Chennai. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'D' Bench dated 30.09.2003 made in I.T.A.No.1304/Mds/2001 for the assessment year 1998-99 against the order of the Commissioner of Income Tax [Appeals] V Chennai 34 in ITA.No.246/2000-2001 dated 19.6.2001 for the assessment year 1998-99 and against the Order of Joint Commissioner of Income Tax, Special Range VI, Chennai 34, P.A.No.AACT 130813/G.L.No.1-T for the assessment year 1998-99 dated 29.1.2001.

For Appellant : Mr.J.Narayanasamy
Standing Counsel (Income Tax)
For Respondent: Mr.R.Venkatnarayanan
for Ms/.Subbaraya Aiyar

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed by the revenue against the order of the Income Tax Appellate Tribunal Madras 'D' Bench made in I.T.A.No.1304/Mds/2001 dated 30.09.2003. The relevant assessment year is 1998-99. The substantial question of law formulated for entertainment of the appeal is as follows:-

> Whether in the facts and circumstances of the case, the Tribunal was right in holding that the incentive received from the Government of India towards additional free sale sugar is a capital receipt ?

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2. The facts culminating in filing the appeal are as follows:- For the assessment year 1998-99, the assessee, a sugar manufacturing company filed a return showing a loss of Rs.2.48 crores. When the matter was taken up for scrutiny, it was observed that the assessee had claimed the incentive received from the Government in a sum of Rs.2.57 crores as capital receipt and excluded the same from computation of income. The assessing officer held that it is a revenue receipt on the ground that the incentive was paid on additional free sale sugar and it was to be used to repay term loans and interest. Since the incentive was based on day to day production, it cannot be termed as a capital receipt. Aggrieved by the re-assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who dismissed the appeal. The assessee filed a second appeal before the Income Tax Appellate Tribunal. The Tribunal following its earlier order, as well as the judgments of this Court reported in 248 ITR 92 (Commissioner of Income Tax Vs. South India Sugars Ltd.,) and the assessee's own case in T.C.Nos.777 and 778 of 1995 allowed the appeal.

3. Learned counsel on either side submitted that the issue involved in the present tax case appeal is covered against the Revenue by the order of this Court dated 11.9.2001 passed in assessee's own case in T.C.Nos.777 and 778 of 1995 (COMMISSIONER OF INCOME TAX VS. TAMILNADU SUGAR CORPORATION LTD)

4. Identical question of law came up for consideration before this Court in the case of COMMISSIONER OF INCOME TAX VS. PONNI SUGARS & CHEMICALS LTD., (260 ITR 605). In that case, the Division Bench of this Court in which one of was also a party (K.Raviraja Pandian,J.) after considering the scheme which provided incentives to new sugar factories and other incentives given by the Government by way of permitting the sugar mills to sell certain percentage of sugar in the open market has held as follows:-

> "The line of separating "capital from revenue" is a line which is not fixed and unalterable, but one which shifts from time to time depending upon the peculiar facts of a given case. It is the sum total of all the relevant facts of a given case, which will determine the ultimate decision as to whether a particular item of receipt or expenditure is to be regarded as being in the capital field or in the revenue field. The nature of the receipt of the incentive has to be examined in the light of that object. The purpose and object of the scheme is of vital significance. If the Government found it convenient to adopt a policy of enabling the entrepreneurs to initially fund the capital cost of the project by obtaining loans from the public financial institutions by inducing the entrepreneur

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and the lender institution to rely upon the incentives provided under the scheme for discharging such loans, it cannot be said that the incentive given being post production, though meant exclusively for meeting the capital cost, the amount of the incentive would be a trading receipt in the hands of the recipient. The fact that the receipt was subsequent to the commencement of production cannot be allowed to stand in the way of its proper treatment as a receipt in the capital field meant to meet a capital cost."

The above judgment has taken into consideration all the earlier judgments, which considered the various other incentive schemes and held as above. Following the above said judgment, as the issue is covered by the said decision, the tax case appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

krr/

To

1.The Assistant Registrar, Income-Tax Appellate Tribunal, III Floor, Rajaji Bhavan, Besant Nagar, Madras 90 (with records five copies).

2.The Joint Commissioner of Income Tax, Special Range VI
Chennai 34.

3.The Commissioner of Income Tax,
[Appeals] V, Chennai 34.

4. The Commissioner of Income Tax I,
Chennai.

+ 1 CC To Ms.Pushya Sitaraman, Sr. Standing Counsel for Income tax, SR NO.61196

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